1472.

SUPREME COURT OF THE UNITED STATES.

No. 189.

JAMES McCOY, APPELLANT,

vs.

ZACHARIAH RHODES & HIS WIFE LUMINDA MONTGOMERY.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE DISTRICT OF LOUISIANA.

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UNITED STATES CIRCUIT COURT,
Fifth circuit and district of Louisiana:

JAMES H. McCOY
vs.
ZACHARIAH RHODES and Luminda Montgomery, his wife. } No. 1303.

In chancery.

Pleas and proceedings before the honorable circuit court, fifth circuit and district of Louisiana, at a circuit court of the United States, in and for the fifth circuit and district aforesaid, being the December term of said court, held at the city of New Orleans, in the district aforesaid, on the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and forty-eight.

Be it remembered, that heretofore, to wit, on the twenty eighth day of January, in the year of our Lord one thousand eight hundred and forty-five, came James H. McCoy, by his solicitors, Stockton and Steele, esqrs., in the clerk's office of the said court, and filed the following bill of complaint, which is in the words and figures following, to wit:

To the honorable the judges of the fifth circuit court of the United States, held in and for the eastern district of Louisiana, sitting and holding pleas in the chancery side of said court, humbly complaining, sheweth unto your honors your orator, James H. McCoy, of the county of Adams, State of Mississippi, resident, and who is now a citizen of the said State of Mississippi:

That Zachariah Rhodes, of the parish of Tensas, and State of Louisiana, resident, and who is now a citizen of said State of Louisiana, was, before the 7th day of March, A. D. 1840, on the said 7th day of March, A. D. 1840, and now is, in possession and owner in full property of all the following described and named lands, to wit: The northwest quarter of section numbered 29, in township numbered 10 north, of range numbered 10 east, containing by estimation 160 $\frac{22}{100}$ acres; the southwest quarter and west half of northeast quarter of said section numbered 29, containing by estimation 240 $\frac{11}{100}$ acres; the southeast quarter of section numbered 30, in township numbered 10 north, of range numbered 10 east, containing by estimation 161 $\frac{60}{100}$ acres; and the northwest quarter of section numbered 32, in township numbered 10 north, of range numbered 10 east, containing by estimation 160 acres, as designated and marked on the surveys of lands made by the United States in the district of public lands lying north of Red river, in the State of Louisiana; all which said lands are situate in what is now the parish of Tensas, but which was, on the said seventh day of March, A. D. 1840, part and parcel of the said parish of Concordia.

That said Zachariah Rhodes, being indebted to your orator, was sued by him in the ninth district court of the State of Louisiana, for said parish of Concordia, and on the 24th day of February, A. D. 1840, judgment was rendered by said court in favor of your orator, and against the said Rhodes, for the sum of fifteen hundred and forty-six $\frac{37}{100}$ dollars, with interest thereon, at the rate of eight per cent. per annum, from the 26th day of March, A. D. 1839, till paid, and all costs of suit; which costs amount in all, your orator alleges, to the sum of dollars; that, on the seventh day of March, A. D 1840, a duly authenticated copy of said judgmene was recorded in the office of the recorder of mortgages, in the said parish of Concordia; all which will more fully appear by reference to a copy of said judgment, and by the certificate of the recorder of mortgages of said parish of Concordia, attached thereto, which is here annexed for reference, and marked as exhibit (A;) that said judgment still remains unsatisfied, and no part of said debt has ever been paid to your orator.

That your orator is informed, and verily believes, said Rhodes acquired said lands in manner and by the means following, to wit: On the 6th day of December, A. D. 1839, all said lands were purchased by the said Rhodes from the United States at their land office at the town of Monroe in the State of Louisiana; but the said Rhodes combining with one Eli Montgomery, of the said county of Adams, and with Luminda Montgomery, wife of said Rhodes, (and other persons unknown to your orator, *who*, he prays, when their names shall become known, be made parties defendant to this suit,) to cheat and defraud your said orator of his said debt, made with the register of said land office in the name of said Eli Montgomery, the entry of all said lands, except the northwest quarter of section numbered 29, in township numbered 10 north, of range numbered 10 east, which said last mentioned quarter section was entered by him, said Rhodes, in his own name by right of pre-emption; and for the payment of the price of all said lands so entered in the name of Eli Montgomery aforesaid, he, the said Rhodes, took duplicate receipts from the receiver of public moneys of the United States at said land office in the name of the said Eli Montgomery; and for the payment of the price of said quarter section, entered in the name of him, the said Rhodes, he took from said receiver a duplicate receipt in his own name; that afterwards, to wit, on the seventh day of December, in the year A. D. 1839, in pursuance of the said combination to cheat and defraud your orator, so made and entered into as aforesaid, between the said Rhodes, the said Luminda Montgomery, the said Eli Montgomery, and others, the said Rhodes pretending to sell to said Eli Montgomery the said northwest quarter of section numbered 29, which had been entered in his own name, as aforesaid, made a pretended and fraudulent conveyance of the same by public act to the said Eli Montgomery, who afterwards pretended to be the owner of said quarter section of land; all which will appear by reference to a copy of said act here annexed, and marked as "exhibit B."

That said Eli Montgomery was never in possession of any portion of

UNITED STATES CIRCUIT COURT,
Fifth circuit and district of Louisiana:

JAMES H. McCOY
vs.
ZACHARIAH RHODES and Luminda Montgomery, his wife. } No. 1303.

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Be it remembered, that heretofore, to wit, on the twenty eighth day of January, in the year of our Lord one thousand eight hundred and forty-five, came James H. McCoy, by his solicitors, Stockton and Steele, esqrs., in the clerk's office of the said court, and filed the following bill of complaint, which is in the words and figures following, to wit:

To the honorable the judges of the fifth circuit court of the United States, held in and for the eastern district of Louisiana, sitting and holding pleas in the chancery side of said court, humbly complaining, sheweth unto your honors your orator, James H. McCoy, of the county of Adams, State of Mississippi, resident, and who is now a citizen of the said State of Mississippi:

That Zachariah Rhodes, of the parish of Tensas, and State of Louisiana, resident, and who is now a citizen of said State of Louisiana, was, before the 7th day of March, A. D. 1840, on the said 7th day of March, A. D. 1840, and now is, in possession and owner in full property of all the following described and named lands, to wit: The northwest quarter of section numbered 29, in township numbered 10 north, of range numbered 10 east, containing by estimation 160 $\frac{3}{100}$ acres; the southwest quarter and west half of northeast quarter of said section numbered 29, containing by estimation 240 $\frac{41}{100}$ acres; the southeast quarter of section numbered 30, in township numbered 10 north, of range numbered 10 east, containing by estimation 161 $\frac{60}{100}$ acres; and the northwest quarter of section numbered 32, in township numbered 10 north, of range numbered 10 east, containing by estimation 160 acres, as designated and marked on the surveys of lands made by the United States in the district of public lands lying north of Red river, in the State of Louisiana; all which said lands are situate in what is now the parish of Tensas, but which was, on the said seventh day of March, A. D. 1840, part and parcel of the said parish of Concordia.

That said Zachariah Rhodes, being indebted to your orator, was sued by him in the ninth district court of the State of Louisiana, for said parish of Concordia, and on the 24th day of February, A. D. 1840, judgment was rendered by said court in favor of your orator, and against the said Rhodes, for the sum of fifteen hundred and forty-six $\frac{27}{100}$ dollars, with interest thereon, at the rate of eight per cent. per annum, from the 26th day of March, A. D. 1839, till paid, and all costs of suit; which costs amount in all, your orator alleges, to the sum of dollars; that, on the seventh day of March, A. D 1840, a duly authenticated copy of said judgmene was recorded in the office of the recorder of mortgages, in the said parish of Concordia; all which will more fully appear by reference to a copy of said judgment, and by the certificate of the recorder of mortgages of said parish of Concordia, attached thereto, which is here annexed for reference, and marked as exhibit (A;) that said judgment still remains unsatisfied, and no part of said debt has ever been paid to your orator.

That your orator is informed, and verily believes, said Rhodes acquired said lands in manner and by the means following, to wit: On the 6th day of December, A. D. 1839, all said lands were purchased by the said Rhodes from the United States at their land office at the town of Monroe in the State of Louisiana; but the said Rhodes combining with one Eli Montgomery, of the said county of Adams, and with Luminda Montgomery, wife of said Rhodes, (and other persons unknown to your orator, *who*, he prays, when their names shall become known, be made parties defendant to this suit,) to cheat and defraud your said orator of his said debt, made with the register of said land office in the name of said Eli Montgomery, the entry of all said lands, except the northwest quarter of section numbered 29, in township numbered 10 north, of range numbered 10 east, which said last mentioned quarter section was entered by him, said Rhodes, in his own name by right of pre-emption; and for the payment of the price of all said lands so entered in the name of Eli Montgomery aforesaid, he, the said Rhodes, took duplicate receipts from the receiver of public moneys of the United States at said land office in the name of the said Eli Montgomery; and for the payment of the price of said quarter section, entered in the name of him, the said Rhodes, he took from said receiver a duplicate receipt in his own name; that afterwards, to wit, on the seventh day of December, in the year A. D. 1839, in pursuance of the said combination to cheat and defraud your orator, so made and entered into as aforesaid, between the said Rhodes, the said Luminda Montgomery, the said Eli Montgomery, and others, the said Rhodes pretending to sell to said Eli Montgomery the said northwest quarter of section numbered 29, which had been entered in his own name, as aforesaid, made a pretended and fraudulent conveyance of the same by public act to the said Eli Montgomery, who afterwards pretended to be the owner of said quarter section of land; all which will appear by reference to a copy of said act here annexed, and marked as "exhibit B."

That said Eli Montgomery was never in possession of any portion of

said lands, but he, the said Rhodes, had possession thereof at the aforesaid entry, and still has the same.

That afterwards, the said Eli Montgomery, pretending to be the owner of all said lands, on the 10th day of December, A. D. 1841, made a conveyance thereof, in full property, to one Thomas S. Ford for thirteen thousand dollars; of which sum three thousand dollars were paid to the said Eli Montgomery in cash, and the balance of ten thousand dollars was secured to be paid by eight notes made by said Ford, payable to the said Eli Montgomery, or order, with special mortgage on the lands so conveyed; which will appear by reference to a copy of said conveyance here annexed for reference, and marked as "exhibit C." That afterwards, said Eli Montgomery, after deducting from said cash so received from said Ford, a small sum which he pretended was due and owing by the said Zachariah Rhodes to him, for moneys pretended to have been before that time advanced and loaned by him to the said Rhodes, paid the balance thereof to the said Rhodes, and also gave up to the said Rhodes the said eight notes which had been made and delivered to him by the said Ford as aforesaid; that, after the said Ford had occupied said lands for some time, becoming convinced that he was not able to pay said notes, he agreed with the said Zachariah Rhodes to reconvey said lands to him or to the wife of the said Rhodes, Mrs. Luminda Montgomery, who, your orator charges, is the niece of the said Eli Montgomery, and to receive, as the whole and sole consideration of the said transfer and conveyance, the said eight notes which had been given by him as aforesaid to the said Eli Montgomery; and in pursuance of said agreement, on the seventh day of November, A. D. 1842, the said Ford conveyed to the said Luminda Montgomery, wife of said Rhodes, all said lands which had been entered and purchased of the United States, in the manner aforesaid, by the said Rhodes on the sixth day of December, A. D. 1839; all which will appear by reference to said conveyance—a copy of which is here annexed for reference, and marked as "exhibit D."

Now, your orator alleges and avers, and so the fact is, that, from the day on which said judgment was recorded in the office of the recorder of mortgages for the parish of Concordia, to wit, from the 7th day of March, A. D. 1840, it operated as a judicial mortgage in favor of your orator on all the aforesaid lands, notwithstanding some of said lands had been entered in the name of the said Eli Montgomery, and the remainder, to wit, that which had been entered in the name of the said Rhodes, was pretendedly conveyed by him as aforesaid to the said Eli Montgomery; because your orator avers and alleges, that said lands were all really bought from the United States by the said Rhodes for himself, and not for the said Eli Montgomery; and that the entry of some of said lands in the name of said Eli Montgomery, and the sale to him, said Eli, by said Rhodes, of that portion of said lands entered in the name of said Rhodes, were made in pursuance of the said illegal combination and confederacy entered into, as hereinbefore stated, between the said Rhodes, his wife Luminda Montgomery, Eli Montgomery, and

others, to cheat and defraud your orator of his just demands against the said Zacharish Rhodes; and that said Rhodes was always and is the only true and lawful owner and possessor of all said lands; and, also, because the said pretended act of conveyance of the said lands, which were entered in the name of the said Rhodes, were to the said Eli Montgomery by the said Rhodes, on the 7th day of December, 1839, was never recorded in the office of the parish judge of Concordia, until long subsequent to the 7th day of March, A. D. 1840, (on which last mentioned day the judgment of your orator against said Rhodes was recorded in the office of the recorder of mortgages of said parish of Concordia,) your orator alleges and avers, that said pretended sale cannot affect the mortgage right of your orator on that portion of said lands.

Your orator further avers and alleges, that the said Eli Montgomery never at any time had actual and legal possession of said lands or any part thereof; but that, on the contrary, the said Rhodes always had possession thereof, except while said lands were in the possession of the said Ford; that said Eli never had any actual or real interest in any of said lands; but he laid claim thereto only in virtue of the said illegal combination and conspiracy, entered into by and between him, the said Rhodes, the said Luminda Montgomery, his wife, and others, to cheat and defraud your orator; and that when he conveyed the said lands to the said Ford, on the 10th day of December, A. D. 1841, he did so only as the trustee of said Rhodes, and he received the cash payment and the eight notes made by the said Ford only as trustee of said Rhodes, to whom the whole of said price legally and equitably belonged; and finally he, said Eli, was only a trustee of said Rhodes, and held all of said lands to the use and benefit of him, the said Rhodes, and to the use and benefit of him only.

That though it is pretended by the said Rhodes and his said wife, Luminda Montgomery, the price pretended to have been paid by her, the said Luminda, to the said Ford, for the said lands, when they were conveyed to her by said Ford, as herein before stated, was money or things which were the separate property of her, the said Luminda; yet your orator charges, and so the fact is, that the said price was not paid in the funds or separate property of her, the said Luminda, but was really paid with the said eight notes which had been given by the said Ford to the said Eli Montgomery; and which were really the rightful property of him, the said Rhodes, and were now returned to the said Ford by the said Rhodes, as the whole and sole consideration of the said conveyance of said lands from said Ford to the said Luminda Montgomery.

That the conveyance from the said Ford to the said Luminda Montgomery was procured by the said Rhodes, the said Eli Montgomery, and the said Luminda Montgomery, to be made unto the said Luminda, and in her name only, for the purpose of cheating and defrauding your orator; but your orator alleges, that at and long before the time of making said conveyance as aforesaid, by the said Ford to the said Luminda, she was the lawful wife of him, the said Rhodes, by mar-

riage long before that time contracted between them in the State of Louisiana, where they have ever resided; and, consequently, your orator avers said lands, though purchased in the name of her, the said Luminda, became thereby the property of the community of acquets and gains, by the laws of Louisiana existing, between her, the said Luminda, and the said Rhodes, and as such were and are, for that reason, also liable and subject to the payment of your orator's demand against the said Rhodes.

All which actings, doings, and pretences, your orator avers, are contrary to equity and good conscience, and tend to the manifest injury of your orator in the premises. Your orator shews that said Eli Montgomery would have been made party to this suit by your orator, but he is out, and permanently resides out, of the jurisdiction of this honorable court, so that the process thereof cannot reach him.

In tender consideration whereof, and forasmuch as your orator is remediless in the premises, at and by the direct and strict rules of the common law, and cannot have adequate relief, save in a court of equity, where matters of this and the like nature are properly cognizable and remediable; to the end, therefore, that the said defendants, Zachariah Rhodes and Luminda Montgomery, his wife, may true, perfect, and full answer make to all and singular the matters and things aforesaid; and more particularly that he, the said Rhodes, answer under oath the following interrogatories, to wit:

1st. Whether or not he, the said Rhodes did, on the 6th day of December, A. D. 1839, or at any other time, at the land office of the United States, at the town of Monroe, and State of Louisiana, enter with the register of said office, and purchase from the United States in the name of the said Eli Montgomery, all the lands herein before described, (except the northwest quarter of section numbered 29, in township numbered 10 north, of range numbered 10 east,) and pay to the receiver of public moneys at said office the price of said lands, and take from said receiver duplicate receipts therefor in the name of said Eli Montgomery?

2d. Whether or not he, the said Rhodes, did enter at the same time and place with the said register, in his own name, and purchase from the United States, the said northwest quarter of section numbered 29, in township numbered 10 north, of range numbered 10 east, and pay to the said receiver the price thereof, and take duplicate receipts therefor from the said receiver in his own name.

May it please your honors to grant the most gracious writ of subpœna to be directed to the said Zachariah Rhodes and to the said Luminda Montgomery, his wife, thereby commanding them, and each of them, at a certain day, and under certain paine to be therein inserted, personally to be and appear before your honors in this honorable court, then and there to answer the premises, and to stand to and abide the decree of this honorable court in the premises; that it may be referred to one of the masters of this honorable court to take an account of what is due to your orator for principal and interest on his said mortgage from

the said defendant, Zachariah Rhodes; and that the said defendant, Zachariah Rhodes, may be decreed to pay to your orator what shall be found due on said account by a short day to be appointed by this honorable court in that behalf, together with all the costs of this suit; and, in default thereof, that the whole of said lands, so mortgaged as aforesaid, or sufficient thereof, be decreed to be sold to pay and satisfy the amount of your orator's demand and all costs. And may it please your honors to grant all such other and further relief as the nature and justice of his case will admit; and, as in duty bound, your orator will ever pray, &c.

Signed, RICHARD C. STOCKTON and
ALEXANDER T. STEELE.
Solicitors and Counsel for Complainant.

The defendant, Zachariah Rhodes, is required to answer categorically under oath the interrogatories, numbered 1st and 2d, in the foregoing bill of complaint.

Signed, RICHARD C. STOCKTON, and
ALEXANDER T. STEELE,
Solicitors and Counsel for Complainant.

Exhibit "A," annexed to the bill.

JAMES H. McCOY,
vs.
ZACHARIAH RHODES. } No. 417.

Ninth district court, parish of Concordia.

By reason of a judgment by default against the defendant in the above entitled cause, and the time allowed by law for setting the same aside having expired, the said judgment was made final; and by further reason of the law and the evidence being in favor of the plaintiff, and the court having been satisfied of the justness and legality of the claim of the plaintiff:

It is hereby ordered, adjudged, and decreed, that the *plaintiff*, Zachariah Rhodes, do pay to the plaintiff, James H. McCoy, the sum of fifteen hundred and forty-six dollars $\frac{77}{100}$, with interest thereon, at the rate of eight per centum per annum, from the 26th day of March, A. D. 1839, till paid, with all costs of suit.

Signed in open court, this 24th day of February, 1840.

FREDERICK H. DAVIS,
Judge 9th District.

STATE OF LOUISIANA,
Parish of Concordia.

I, W. R. C. Vernon, deputy clerk of the district court of the ninth judicial district of the State, and for the parish aforesaid, do hereby certify the foregoing to be a true and correct copy of the judgment rendered in the suit of James H. McCoy vs. Zachariah Rhodes, No. 417, on file, and of record in this court.

In testimony whereof I have hereto set my hand and the seal of said court this 14th day of December, 1844.
[SEAL.] (Signed) W. R. C. VERNON,
Deputy Clerk.

And endorsed on the back as follows, to wit:

STATE OF LOUISIANA,
Parish of Ouachita.

I, George C. McWharten, parish judge and ex officio recorder of mortgages in and for the parish of Concordia, do certify, that the with-[in] judgment was duly recorded in my office on the 7th of March, A. D. 1840.

In testimony whereof I have hereunto set my hand and seal of office this 15th day of January, A. D. 1845.
[SEAL.] (Signed) GEO. C. McWHARTEN,
Parish Judge.

Exhibit "B," annexed to the bill.

Zachariah Rhodes to Eli Montgomery.

STATE OF LOUISIANA,
Parish of Concordia.

Before me, Lewis F. Lanney, parish judge and ex officio notary public in and for said parish and State, personally came and appeared Zachariah Rhodes, of the parish of Concordia, in said State, who declared and acknowledged, that for and in consideration of the sum of fifteen hundred dollars, cash in hand paid, the receipt whereof, before the signing of these presents, is also hereby acknowledged, he has granted, bargained, sold, and delivered, and does, by these presents, hereby grant, bargain, sell, and deliver, unto Eli Montgomery, resident of the city of Natchez, in the State of Mississippi, for the consideration as aforesaid, all the right, title, and interest in and to the following described tract or parcel of land, to wit, northwest quarter of section No. 29, in township No. 10, of range No. 10 east, containing one hundred and sixty acres $\frac{1}{100}$ of an acre, as per receiver's duplicate, No. 5,973, and the same that this vender acquired by purchase, from the United States, at the land office at Monroe, Ouachita, on the 6th December, 1839.

To have and to hold unto the said Montgomery, his heirs and assigns, all the right, title, and interest in and to the above described and herein conveyed premises, together with all and singular the rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining, to his and their only proper use, and benefit, and behoof, forever.

The parties to this act dispense with the production of the certificate of mortgages, and exonerate the judge from all liabilities as contained in article 3,328 of civil code.

In testimony whereof said parties have signed their names, the said

Eli Montgomery, herein represented by attorney in fact, George W. Copley, in presence of Hannibal Faulk and Wesley J. Q. Baker, witnesses hereto required, of lawful age, who here also signed with the parties, and me, judge, on this 7th day of December, A. D. 1839.

In faith whereof I have signed my name and affixed my seal of office.

(Signed) Z. RHODES.

Accepted: GEO. W. COPLY,
Attorney in fact for Eli Montgomery.

H. FAULK,
W. J. Q. BAKER. LEWIS F. LANNY, *Parish Judge.*

STATE OF LOUISIANA,
Parish of Ouachita.

I, Lewis F. Lanny, parish judge in and for said parish and State, do hereby certify the foregoing and within to be a true copy of the original on file and of record in my office.

In testimony whereof I have hereunto signed my name and affixed my seal of office on this eleventh day of December, A. D. 1839.

(Signed) LEWIS F. LANNY, *Judge.*

Recorded 10th December, 1841.

Attest: JAMES DUNLAP,
Parish Judge.

STATE OF LOUISIANA,
Parish of Concordia.

I, George C. McWhorter, parish judge and ex officio recorder of mortgages in and for the parish of Concordia, do certify, that the above is a true and correct transcript from my record book "K," pages 72 and 73.

[SEAL.] In testimony whereof I have hereunto set my hand and seal of office, this 20th day of January, A. D. 1845.

(Signed) GEO. C. McWHORTER,
Parish Judge.

Exhibit C, annexed to the bill.

On the first page of which is endorsed as follows:

I will take the liberty of referring you to a note at the bottom of this in relation to the certificate.

(Signed) McWHORTER.

STATE OF LOUISIANA, *parish of Concordia:*

Be it remembered, that on this tenth day of December, A. D. eighteen hundred and forty-one, before me, William L. Poindexter, a notary public in and for said parish, duly commissioned and qualified, and in presence of the witnesses hereinafter named and undersigned,

personally came and appeared Eli Montgomery, of Adams county, in the State of Mississippi, who declared and said, that, for the consideration to be hereinafter mentioned and expressed, he hath granted, bargained, sold, conveyed, and confirmed, and doth by these presents grant, bargain, sell, convey, and confirm, and deliver, unto Thomas J. Ford, also of said county of Adams, State aforesaid, all the following mentioned and described lots, pieces, parcels, or tracts of land situate in this parish, on Choctaw and Green bayous, and adjoining each other, viz: The northwest quarter of section No. twenty-nine, in township No. ten, of range ten east, containing one hundred and sixty and twenty hundredths acres, as will appear by receiver's receipt No. 5975, dated at Ouachita, La., December 6th, 1839; also, the southwest and west half of northeast quarter of section No. twenty-nine, in township No. ten, range ten east, containing two hundred and forty and thirty-one hundredths acres, as will appear [by] receiver's receipt No. 6069, dated at Ouachita, La., December 10th, 1839; also, the southeast quarter of section No. thirty, in township No. ten, range ten east, containing one hundred and sixty-one acres and sixty hundredths of an acre, as will appear by receiver's receipt No. 6070, dated Ouachita, 10th December, 1839; also, for the northwest quarter of section No. thirty-two, in township No. ten, of range ten east, containing one hundred and sixty acres, as will appear by receiver's receipt No. 6071, dated Ouachita, La., 10th December, 1839, and being the tract or tracts of land upon which Zachariah Rhodes now resides, together with all and singular the buildings, improvements, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold unto the said Thomas J. Ford, his heirs and assigns forever, free from the claims of every person or persons whosoever or whomsoever claiming or to claim said premises.

Now, the consideration of the foregoing sale is declared to be as follows, viz:, the sum of three thousand dollars cash, which the said Eli Montgomery doth hereby acknowledge to have received, and the eight promissory notes of the said Thomas J. Ford, of even date herewith, and payable to the order of the said Eli Montgomery, for the amount and for the time as follows, viz: First, a note for the sum of eight hundred dollars; second, a note for the sum of one thousand dollars; another note for the same sum of one thousand dollars, and a note for the sum of five hundred and thirty-three dollars thirty-three and one-third cents, all payable on the first day of January, eighteen hundred and forty-three; next, the two notes of the said Ford for the sum of one thousand dollars each, and also a note for the sum of thirteen hundred and thirty-three dollars thirty-three and one-third cents, payable on the first day of January, eighteen hundred and forty-four; and lastly, the note of the said Ford for the sum of three thousand three hundred and thirty-three dollars thirty-three and one-third cents, payable on the first day of January, eighteen hundred and forty-five, all paraphed by me, the said notary, "ne varietur," to identify them herewith, and payable at the office of the judge of the parish of Concordia.

And now to these presents personally came and appeared Mistress Ann Maria Miller, wife of the said Montgomery, by him duly authorized and assisted, who declared and said, that, in becoming a party to these presents, she is fully aware of the rights of mortgage which, by the laws of the State, a wife has upon all the property of her husband, and of the community of acquets and gains, and that she approves of the sale made as aforesaid, and wishes to renounce, in favor of the said Thomas J. Ford, all the rights of mortgage which she may have upon the property hereinbefore mentioned and described.

Whereupon, I, the said notary, did inform the said Mistress Ann Maria Montgomery, and explain to her verbally, apart, out of the presence and hearing of her said husband, the nature and extent of her rights, as follows, to wit: That she had, by the laws of the State of Louisiana, a tacit mortgage upon all the property of her husband, and in that of the community: First, for the restitution of her dowry and the replacing of her dotal property, whether brought in marriage or subsequently acquired; second, for the replacing of her paraphernal property alienated during the marriage, or for the reimbursement of the price, when the said property shall have been sold by the wife with the authorization of her husband, and he shall have received the price and appropriated it to his own use; third, to indemnify her for debts which she may have contracted jointly with her husband, and for the security of the obligations imposed upon the husband in case he should have had the administration of his wife's paraphernal property; that, by making her intended renunciation, she deprives herself forever of all recourse against the above described property on account of her said mortgage; but the said Mistress Ann Maria Montgomery, being now well informed of the nature and extent of her rights, declares that she persists in her intention to renounce, as above said, and, with the authorization and assistance of her said husband now present, she does hereby formally and expressly renounce, in favor of the said Thomas J. Ford, all her rights of mortgage whatsoever upon the whole or every part of the property hereinbefore mentioned and described, hereby subrogating him to all her said rights, and binding herself and her heirs, at all times, to acknowledge and sustain the validity of this sale.

And it is agreed between the parties, that the said Eli Montgomery, now the legal holder of said notes, shall not have the right to foreclose the mortgage retained in this sale until all of said notes become due and payable.

And the said Thomas J. Ford, being here present, declares that he accepts this act with all its clauses, and especially mortgages the property herein described and conveyed to secure the payment of said notes.

By the certificate of the recorder of mortgages for said parish of Concordia, it appears that there does not exist of record in his office any mortgage against the foregoing mentioned and described property.

Done and signed at my office, in the town of Vidalia, the day, month, and year first herein written, in presence of William Dix and

David F. Miller, competent witnesses, residing in this parish, who have signed this act with the said appearers, and me, notary.

(Signed) ELI MONTGOMERY,
ANN MARIA MONTGOMERY,
T. J. FORD.

W. Dix,
D. F. Miller.

WM. L. POINDEXTER,
Not. Pub.

A true copy of the original act extant in my office.

In testimony whereof I have hereunto set my hand and the seal of my office, at Vidalia, this tenth day of December, A. D. 1841.

(Signed) WM. L. POINDEXTER,
Not. Pub.

State of Louisiana, *parish of Concordia:*

I, George C. McWhorter, parish judge and ex officio recorder of mortgages, &c., certify, that the above is a true copy of the notary public filed and recorded in my office, 23d January, 1842.

[L. S.] In testimony whereof I have hereunto set my hand and seal of office, this 21st day of January, A. D. 1845.

(Signed) GEO. C. McWHORTER,
Parish Judge.

See act of 35, page 167.—McW.

Exhibit "D," annexed to the bill.

State of Louisiana, *parish of Concordia, ss:*

Be it remembered, that on this second day of November, A. D. eighteen hundred and forty-two, before me, William L. Poindexter, a notary public in and for said parish, duly commissioned and qualified, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared Thomas J. Ford, of Adams county, in the State of Mississippi, who declared and said, that for and in consideration of the sum of ten thousand dollars, to him in hand paid by Mrs. Lucinda Rhodes, of the parish and State aforesaid, and the receipt whereof he doth hereby acknowledge, hath granted, bargained, sold, conveyed, and confirmed, and by these presents doth grant, bargain, sell, convey, confirm, and deliver, unto the said Mrs. Lucinda Rhodes, her heirs and assigns forever, all and singular the following mentioned pieces, parcels, or tracts of land situated in this parish, viz: The northwest quarter of section No. twenty-nine, in township No. ten, of range ten east, containing one hundred and sixty acres and twenty-hundredths of an acre, being the same land entered at the land office at Ouachita, sixth of December, A. D. 1839, by Zachariah Rhodes, as will appear by a receiver's receipt, No. 5975; also the southwest and west half of northeast quarter of section No. twenty-nine, in township ten, of range ten east, containing two hundred and forty acres and thirty-hundredths

of an acre, being the same land entered at the land office aforesaid, on the tenth of December, A. D. 1839, by Eli Montgomery, as will appear by receipt No. 6069; also the southeast quarter of section thirty, in the township and range aforesaid, containing one hundred and sixty-one acres and sixty-hundredths of an acre, entered on the day and year last aforesaid by the said Eli Montgomery; as will appear by the receiver's receipt, No. 6070; also the northwest quarter of section thirty-two, in the township and range aforesaid, containing one hundred and sixty acres, being land entered by the said Eli Montgomery on the day and year aforesaid, as will appear by certificate No. 6071; together with all and singular the buildings and improvements, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining.

To have and to hold, unto the said Mrs. Lucinda Rhodes, her heirs and assigns forever, free from the claim or claims of any and all persons whomsoever lawfully claiming or to claim the same.

And now unto these presents personally came and appeared Mistress Elizabeth Harris, wife of the said Thomas J. Ford, by him duly authorized and assisted, who declared and said, that in becoming a party to these presents she is fully aware of the rights of mortgage which by the laws of the State of Louisiana a wife has upon all the property of her husband, and upon that of the community of acquets and gains, and that she approves of the sale made as aforesaid, and wishes to renounce in favor of the said Mrs. Lucinda Rhodes all the rights of mortgage which she may have upon the property hereinafter mentioned and described.

Whereupon I, the said attorney, did inform the said Mrs. Elizabeth Ford, and explain to her, verbally, apart, out of the presence and hearing of her said husband, the nature and extent of her rights as follows, viz:

That she had by the laws of Louisiana a tacit mortgage upon all the property of her husband, and on that of the community:

First. For the restitution of her dowry, and the replacing of her dotal property, whether brought in marriage *in marriage* or subsequently acquired.

[Second.] For the replacing of her paraphernal property alienated during the marriage, or for the reimbursement of the price when the said property shall have been sold by the wife with the authorization of her husband, and he shall have received the price, and appropriated it to his own use.

Third. To indemnify her for debts which she may have contracted jointly with her husband, and for the security of the obligations imposed upon the husband in case he should have had the administration of his wife's paraphernal property. That, by making her intended renunciation, she deprives herself forever of all recourse against the above described property on account of her said mortgage.

And the said Mrs. Elizabeth Ford being now well informed of the nature and extent of her rights, declared that she persists in her intention as aforesaid, and with the authorization and assistance of her said

husband, now present, she does hereby formally and expressly renounce, in favor of the said Lucinda Rhodes, all her rights of mortgage whatsoever, upon the whole and every part of the property hereinbefore mentioned and described, hereby subrogating her to all her said rights, and bringing herself and her heirs at all times to acknowledge and sustain the validity of this sale; and Zachariah Rhodes, the husband of Lucinda Rhodes, being here present, declares that he accepts this act for his said wife, and duly authorizes and assists her herein.

Done and passed at my office, in the town of Vidala, the day, month, and year first herein written, in presence of David S. Stacy and Alexander C. Hunter, competent witnesses, residing in this parish, who have signed this act with the said appearers and me, the said notary.

T. J. FORD,
ELIZABETH FORD,
LUCINDA RHODES,
By Z. RHODES.

Signed—D. S. Stacy,
A. C. Hunter.

WILLIAM L. POINDEXTER,
Notary Public.

I certify the above and foregoing to be a true copy of the original extant in my office. Witness my hand and official seal, this 18th February, 1843.

WILLIAM L. POINDEXTER,
Notary Public.

Recorded February 18th, 1843.
Attest: GEORGE C. McWHORTER,
Parish Judge.

State of Louisiana, *parish of Concordia:*

I, George C. McWhorter, parish judge and ex officio recorder of mortgages in and for the parish of Concordia, certify, that the within and foregoing act is a true and correct copy from the record book "K" in my office.

In testimony whereof I have hereunto set my hand and seal of office, this 21st day of January, A. D. 1845.

[seal.] (Signed) GEO. C. McWHORTER,
Parish Judge.

And afterwards, to wit, on the 15th day of March, 1845, at a circuit court aforesaid, in session at the city of New Orleans, the following order was entered on the minutes of said court:

James H. McCoy
vs. } No. 1303.
Z. Rhodes et als.

On motion of J. R. Grymes, esq., of counsel for defendants, it is ordered, that the time for filing an answer be extended till the first Monday, 1845.

Afterwards, to wit, on the third day of December, 1845, was filed in the clerk's office the following answer of Rhodes, to wit:

Circuit court of the United States, 5th circuit, district of Louisiana.

James H. McCoy, plaintiff,
vs.
Zachariah Rhodes and Luminda Montgomery, his wife, def'ts. } In equity.

The joint answer of the said defendants, Zachariah Rhodes and Luminda, his wife, to the bill of complaint of the said plaintiff.

These respondents, saving and reserving to themselves all exceptions to the many errors, untruths, and informalities in the said plaintiff's bill contained:

For answer thereto, or so much thereof as they are advised it is material for them to answer unto, they answer and say:

That true it is that this respondent, Zachariah Rhodes, did, on the 6th day of December, 1839, enter at the land office, Ouachita, Louisiana, the northwest quarter of section No. 29, in township No. 10, of range 10 east, and that he took a receipt for two hundred dollars and twenty-five cents, the price thereof, under the laws of the United States; but these respondents aver that the entry aforesaid was made by this respondent, Rhodes, for Eli Montgomery, of the State of Mississippi; that the said Eli Montgomery did furnish the money to pay for the same, and the same was actually paid for out of the moneys so furnished by the said Montgomery; and that the conveyance of the same to the said Montgomery by this respondent, Rhodes, as set forth in the said complainant's bill, was made to complete the legal title in him, said Montgomery's name, according to the original intent of all parties, and as equity and justice required; this respondent, Z. Rhodes, having only acted as the agent of the said Montgomery, and for his use, in making said entry, and paying the said money; and not with any view to cheat, defraud, or wrong the said plaintiff, as is falsely charged in said plaintiff's bill. These respondents admit that this respondent, Z. Rhodes, did afterwards make the entries of the three other parcels or tracts of land mentioned in the said plaintiff's bill, to wit, on the 10th day of December, 1839. That he made the entries and paid the money to the receiver of public moneys, in the name and for the use of the said Eli Montgomery, and took the receipts for the same in the name of the said Montgomery; that he acted by the directions of said Montgomery as his agent, and the said Montgomery furnished him with the money to pay for the same for his, said Montgomery's, use. And these respondents aver, and so the truth is, that the said Montgomery became the true and lawful proprietor, in law and equity, of lands as his own sole and absolute property. These respondents further answering say, that the said Eli Montgomery did afterwards sell all the said lands to Thomas J. Ford, as set forth in said complainant's bill; but these respondents aver and state that the said sale was made by the said Eli Montgomery to said Ford for his own use and as his own property, and

that these respondents had no interest or participation therein; that after said sale was made the notes of the said Ford were paid to this respondent, Luminda Montgomery, by the said Eli Montgomery, for moneys due to her from the estate of her deceased father, Joseph Montgomery, of whom the said Eli Montgomery was executor or administrator of his estate, and that the said notes being secured by mortgage on all the said lands, and the said Ford having become embarrassed, and unable to pay the same, the lands were taken by this respondent, Luminda, in satisfaction of said notes, by agreement between these respondents and said Ford, and the conveyance made accordingly, for the sole use of this respondent, Luminda.

These respondents further state and aver, that the marriage of these respondents was celebrated on the 28th of December, 1834; that the debt for which the plaintiff has sued your respondent, Z. Rhodes, and for which he has obtained the judgment, mentioned in the said plaintiff's bill, was contracted before the said marriage.

And these respondents deny that the said plaintiff has any right, in law or equity, to have the same satisfied or paid out of the lands aforesaid, as he prays for in his said bill. And these respondents, expressly denying all the fraud, combinations, deceptions, or cheating set forth and alleged in said plaintiff's bill, pray that the same may be dismissed. And this respondent, Zachariah Rhodes, in answer to the interrogatories, Nos. 1 and 2, which he is required to answer by said bill, he answers as follows:

To the 1st he answers, that he did not, on the 6th of December, 1839, make any such entry of lands as is mentioned in this interrogatory; but that on the 10th day of December, 1839, this respondent did, as the agent of Eli Montgomery, make the entry in his, said Montgomery's, name, for his use, and paid the money to the receiver and took receipts therefor in the name of the said Montgomery, who had furnished him with the money for that purpose.

To the 2d interrogatory he answers that, on the 6th day of December, 1839, he did enter with the said register, in his own name, the land mentioned in this interrogatory, and paid the money and took a receipt in his own name; but the entry was made by this respondent as the agent of Eli Montgomery, by his direction and for his use, and the money paid therefor was furnished him by the said Montgomery, and the land afterwards conveyed to him.

(Signed) JNO. R. GRIMES,
Solicitor for defendants.

Zachariah Rhodes, one of the respondents, being duly sworn, doth depose and say that, all the matters and things set forth in the foregoing answer as of his own knowledge are true, and those stated from the information of others he believes to be true.

And the deponent further says, that the answers above made by him to the interrogatories propounded to him are true.

(Signed) Z. RHODES.

Sworn to and subscribed before me, this 2d day of December, 1845.
(Signed) F. N. HARALSON, *D'y Clerk.*

And afterwards, to wit, on the 12th day of December, 1845, was filed in the clerk's office the following replication of James H. McCoy, in these words, to wit:

Circuit court of the United States, 5th circuit, district of Louisiana.

JAMES H. McCOY
vs.
ZACHARIAH RHODES and Luminda Montgomery, his wife. } In equity.

The replication of James H. McCoy, complainant, to the joint answer of Zachariah Rhodes and his wife, Mrs. Luminda Montgomery.

This repliant, saving and reserving to himself all manner of advantage and exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto saith, that he doth, and ever will, maintain and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answers, each and all, are very uncertain, evasive, and insufficient in the law to be replied unto by the repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed.

(Signed) STOCKTON & STEELE,
Solicitors and attorneys for repliant.

Afterwards, to wit, on the 16th day of January, 1846, at a circuit court aforesaid, in session at the city of New Orleans, the following order was entered on the minutes of said court:

JAMES H. McCOY
vs. } No. 1172.
Z. RHODES.

On motion of R. Stockton, esq., solicitor for complainant herein, it is ordered that O. D. Stillman be, and he is hereby, appointed a commissioner to take the depositions of H. Holmes, Daniel B. Richardson, and other witnesses for the complainant residing in the parish of Ouachita, in the district of Louisiana, on interrogatories filed herein.

Deposition of the above at the back of this record.

Afterwards, to wit, on the 11th day of May, 1846, at a circuit court aforesaid, in session at the city of New Orleans, the following order was entered on the minutes of said court:

that these respondents had no interest or participation therein; that after said sale was made the notes of the said Ford were paid to this respondent, Luminda Montgomery, by the said Eli Montgomery, for moneys due to her from the estate of her deceased father, Joseph Montgomery, of whom the said Eli Montgomery was executor or administrator of his estate, and that the said notes being secured by mortgage on all the said lands, and the said Ford having become embarrassed, and unable to pay the same, the lands were taken by this respondent, Luminda, in satisfaction of said notes, by agreement between these respondents and said Ford, and the conveyance made accordingly, for the sole use of this respondent, Luminda.

These respondents further state and aver, that the marriage of these respondents was celebrated on the 28th of December, 1834; that the debt for which the plaintiff has sued your respondent, Z. Rhodes, and for which he has obtained the judgment, mentioned in the said plaintiff's bill, was contracted before the said marriage.

And these respondents deny that the said plaintiff has any right, in law or equity, to have the same satisfied or paid out of the lands aforesaid, as he prays for in his said bill. And these respondents, expressly denying all the fraud, combinations, deceptions, or cheating set forth and alleged in said plaintiff's bill, pray that the same may be dismissed. And this respondent, Zachariah Rhodes, in answer to the interrogatories, Nos. 1 and 2, which he is required to answer by said bill, he answers as follows:

To the 1st he answers, that he did not, on the 6th of December, 1839, make any such entry of lands as is mentioned in this interrogatory; but that on the 10th day of December, 1839, this respondent did, as the agent of Eli Montgomery, make the entry in his, said Montgomery's, name, for his use, and paid the money to the receiver and took receipts therefor in the name of the said Montgomery, who had furnished him with the money for that purpose.

To the 2d interrogatory he answers that, on the 6th day of December, 1839, he did enter with the said register, in his own name, the land mentioned in this interrogatory, and paid the money and took a receipt in his own name; but the entry was made by this respondent as the agent of Eli Montgomery, by his direction and for his use, and the money paid therefor was furnished him by the said Montgomery, and the land afterwards conveyed to him.

(Signed) JNO. R. GRIMES,
Solicitor for defendants.

Zachariah Rhodes, one of the respondents, being duly sworn, doth depose and say that, all the matters and things set forth in the foregoing answer as of his own knowledge are true, and those stated from the information of others he believes to be true.

And the deponent further says, that the answers above made by him to the interrogatories propounded to him are true.

(Signed) Z. RHODES.

Sworn to and subscribed before me, this 2d day of December, 1845.
(Signed) F. N. HARALSON, *D'y Clerk.*

And afterwards, to wit, on the 12th day of December, 1845, was filed in the clerk's office the following replication of James H. McCoy, in these words, to wit:

Circuit court of the United States, 5th circuit, district of Louisiana.

JAMES H. McCOY
vs.
ZACHARIAH RHODES and Luminda Montgomery, his wife. } In equity.

The replication of James H. McCoy, complainant, to the joint answer of Zachariah Rhodes and his wife, Mrs. Luminda Montgomery.

This repliant, saving and reserving to himself all manner of advantage and exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants, for replication thereunto saith, that he doth, and ever will, maintain and prove his said bill of complaint to be true, certain, and sufficient in the law to be answered unto by the said defendants; and that the answers, each and all, are very uncertain, evasive, and insufficient in the law to be replied unto by the repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true. All which matters and things this repliant is ready to aver, maintain, and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he has already prayed.
(Signed) STOCKTON & STEELE,
Solicitors and attorneys for repliant.

Afterwards, to wit, on the 16th day of January, 1846, at a circuit court aforesaid, in session at the city of New Orleans, the following order was entered on the minutes of said court:

JAMES H. McCOY
vs. } No. 1172.
Z. RHODES.

On motion of R. Stockton, esq., solicitor for complainant herein, it is ordered that O. D. Stillman be, and he is hereby, appointed a commissioner to take the depositions of H. Holmes, Daniel B. Richardson, and other witnesses for the complainant residing in the parish of Ouachita, in the district of Louisiana, on interrogatories filed herein.

Deposition of the above at the back of this record.

Afterwards, to wit, on the 11th day of May, 1846, at a circuit court aforesaid, in cession at the city of New Orleans, the following order was entered on the minutes of said court:

JAMES H. McCOY
vs.
ZACHARIAH RHODES et UX. } 1303.

The defendants in this cause, Zachariah Rhodes and Luminda, his wife, by their solicitor, John R. Grimes, esq., will take notice, that the complainant, James H. McCoy, by his solicitors, Stockton & Steele, esqrs., will move this court, on Saturday next, the 16th instant, at 10 o'clock, A. M., for an order of publication of the testimony taken in this cause, which will be granted them, unless said defendants, by their solicitor, show cause to the contrary.

Afterwards, to wit, on the 16th day of May, 1846, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

JAMES H. McCOY
vs.
ZACHARIAH RHODES et UX. } 1303.

The defendants herein, by their solicitor, Jno. R. Grimes, having been duly notified by the complainant that on this day the court would be moved for an order of publication of the testimony taken in this case, and said deponents having failed to appear on this day, and resist said motion, and the complainant, James H. McCoy, now appearing in court by his Steele, esq., and, on motion of said solicitor, it is ordered, that publication of the testimony taken in this cause be and the same is hereby made.

Afterwards, to wit, on the 19th day of May, 1846, at a circuit court aforesaid, in session at the city of New Orleans, the following order was entered on the minutes of said court:

JAMES H. McCOY
vs.
ZACHARIAH RHODES et UX. } 1303.

On motion of Jno. R. Grimes, esq., solicitor for the respondents herein, and on suggestion to the court that an order of publication of the testimony taken herein, made in this case on the 16th day of May last past, 1846, and that though duly notified to appear and show cause, on said 16th instant, why publication should not be made of the testimony herein taken, yet indisposition prevented him from doing so. It is ordered that said order of publication be and the same is hereby re-opened, for said defendants to show cause, if any they can, on to-morrow, at 10 o'clock, A. M., why publication should not be made of said testimony.

Afterwards, to wit, on the 20th day of May, 1846, at the circuit court aforesaid, in session at the city of New Orleans, the following order was entered on the minutes of said court:

JAMES H. McCOY
vs. } 1303.
ZACHARIAH RHODES et Ux.

The motion herein made by the complainant, for an order of publication of the testimony taken in this cause, having been granted at a former day of this court, and said order having been opened, on motion of the respondents, by their solicitor, and with the consent of the complainant's solicitor and continued until this morning, said motion was taken up and argued; whereupon it was ordered, and the court doth now order, that said order of publication be and the same is hereby refused, and that the time for taking testimony in this case be further enlarged and extended until the third Monday in June next coming.

Afterwards, to wit, on the 23d day of June, 1846, at a circuit court aforesaid, in session at the city of New Orleans, the following order was entered in the minutes:

JAMES H. McCOY
vs. } 1303.
ZACHARIAH RHODES et Ux.

On motion of John R. Grimes, esq., solicitor for respondents Rhodes and wife herein, and, on cause shown, it is ordered that the time for taking testimony in this cause, in behalf of said respondents, be enlarged and extended until the first Monday in November next ensuing.

Afterwards, to wit, on the 3d day of May, 1837, at the circuit court aforesaid, in session at New Orleans, the following order was entered in the minutes of said court:

JAMES H. McCOY
vs. } 1303.
ZACHARIAH RHODES et Ux.

This cause having been regularly set down for final hearing at the rules, appeared this day the complainant, by his solicitors, Stockton & Steele, esqs., and said cause having been assigned for this day, said cause was taken up and submitted to the court on behalf of the complainant.

Afterwards, to wit, on the 18th January, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was entered in the minutes of the court:

J. H. McCOY
vs. } 1303.
ZACHARIAH RHODES et Ux.

This case came on to be heard on bill, answers, exhibits, and proofs on file, appeared this day the complainant, by his counsel, Stockton & Steele, esqs., and submitted said cause to the court on behalf of said complainant, when the same was taken under advisement.

Afterwards, to wit, on the 20th day of January, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was entered in the minutes of said court:

J. H. McCoy
vs. } 1303.
Z. Rhodes et Ux.

The argument of counsel on behalf of the defendants was this day heard, J. R. Grymes, esq., appearing for said defendants; when the same having been concluded was submitted to the court, who took time to consider.

Afterwards, to wit, on the 24th day of January, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was entered in the minutes of said court:

J. H. Mc Coy
vs. } 1303.
Zachariah Rhodes et Ux.

This cause came on to be heard on the bill, answers, exhibits, and proof, and was argued by counsel; and the court having duly considered the matters in controversy, it is ordered, adjudged, and decreed, that the complainant's bill be, and the same is hereby, dismissed with costs.

Afterwards, to wit, on the 29th day of January, 1848, the following "petition for a rehearing" was filed in the clerk's office, to wit:

James H. McCoy
vs.
Zachariah Rhodes and his wife } 1303.
Luminda Montgomery.

In chancery.

To the honorable the judges of the fifth circuit court of the United States, sitting in chancery in and for the district of Louisiana, the petition of James H. McCoy, the complainant in the above entitled suit, who is a citizen of the State of Mississippi, most respectfully shews:

That on Monday, the 24th day of January, 1848, a final decree was rendered in said suit against your petitioner, dismissing the bill of complaint of your petitioner, filed and exhibited therein against the said Zachariah Rhodes and his wife Luminda Montgomery, who are citizens of the State of Louisiana, as will appear by reference to the minutes of the court of that day, to which petitioner respectfully begs leave to refer; that your petitioner is advised by his counsel that there is an error in said decree so dismissing his said bill as aforesaid, and that, instead of said decree, one should have been rendered in favor of your petitioner, as prayed for in his bill of complaint; that petitioner has, by virtue of the laws of Louisiana, a judicial mortgage on the northwest quarter of section numbered twenty-nine, in township numbered ten north, of range numbered ten east, in the district of lands lying north of Red river, in Louisiana, as is set forth in his original bill, to which he prays leave to refer; that although it appears by the exhibits of the

defendant that said quarter section of land was transferred by the defendant, Zachariah Rhodes, to Eli Montgomery, on the seventh day of December, in the year 1839, yet the said judgment of complainant against the said Zachariah Rhodes was rendered in the district court of Louisiana, for the parish of Concordia, on the 24th day of February, in the year 1840, and a duly certified copy thereof was recorded in the office of the recorder of mortgages, for the said parish of Concordia, wherein the land lay on the seventh day of March, in the year 1840, while the said act of conveyance of said land, from the said Zachariah Rhodes to the said Eli Montgomery, was not recorded in the transfer office of said parish, until long after the said seventh day of March, in the year 1840; that though according to the course of the laws of England, and the practice in the courts there, this would not give to your petitioner a mortgage and lien on said land, yet it is respectfully submitted to your honors, that under the laws of Louisiana it is otherwise; and so it has been repeatedly held and ruled by the supreme court of Louisiana, as will more fully appear by reference to the decisions of said supreme court in the following named cases, to wit: In Canoly vs. Desmara et al., reported in the seventh volume of Martin's Reports, of the new series, p. 661; in Duplessis vs. Bontté et al., in 11 Louisiana Reports, 346; in Gravin et al. vs. Buron et al., in 4 Louisiana Reports, 239; in Adelaide Mury vs. François Lampré, in 6 Robinson's Reports, 315; and in other cases; and therefore your petitioner alleges and avers, that for this reason the said decree is erroneous; that it ought to be set aside, and your petitioner's mortgage on said northwest quarter of section No. 29, in township No. 10 north, of range No. 10 east, ought to be recognised and established, to the exclusion of the rights of all persons whomsoever.

Your petitioner shows further, that said decree ought to be set aside and a rehearing granted, for other reasons: Because the said Zachariah Rhodes and Luminda Montgomery intermarried with each other long previous to the seventh day of November, 1842; that said marriage took place in the State of Louisiana; that the said Rhodes and wife resided in Louisiana on the said seventh day of November, 1842, and there had resided for many years prior thereto; that on the seventh day of November, in the year 1842, all said lands mentioned and fully described in complainant's bill, were conveyed by Thomas S. Ford to the said Luminda Montgomery, wife of said Zachariah Rhodes, as mentioned in said bill; that said conveyance was, according to the laws of Louisiana, equivalent to a sale and conveyance from said Ford to said Rhodes and wife, and the said lands so became liable and subject to your petitioner's judicial mortgage, as set forth in his original bill of complaint; all which will fully appear by reference to the decisions of the supreme court of Louisiana, to which petitioner begs leave to refer, to wit, in the matter of Ford vs. Ford et al., reported in 1st Louisiana Reports, 206, and in numerous other cases; that for these reasons, hereinbefore set out, your petitioner alleges and avers he is entitled to a rehearing in this cause. Your petitioner begs leave to refer your honors, for all facts in this petition stated, to the record.

In consideration of all which the premises, your petitioner prays that said decree herein rendered be set aside, that a rehearing of the cause be granted generally, and that it be ordered to be again placed on the trial docket of this honorable court; and that a hearing thereof may be had in due time, according to the practice of this honorable court. Petitioner prays for all such further and general relief as the nature and justice of his case will allow; and so in duty bound, &c.

(Signed) STOCKTON & STEELE,
Solicitors for complainant.
R. C. STOCKTON,
Counsel for complainant.

In my opinion the complainant is entitled to a rehearing in the above entitled cause, for the reasons set out in the foregoing petition.

(Signed) RICHARD C. STOCKTON,
Of counsel for compl'nt.

New Orleans, 29th January, 1848.

Afterwards, to wit, on the 29th day of January, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

J. H. McCoy
vs. } 1303.
Zachariah Rhodes et Ux.

On motion of R. C. Stockton, esq., of counsel for complainant, and on filing a petition for a rehearing, it is ordered by the court, that the defendants herein show cause, on Saturday, the 5th day of February, 1848, at 10 o'clock A. M., why a new trial should not be granted for the reasons assigned in said petition; whereupon J. R. Grymes, esq., the counsel for the defendants, being in court, took notice of this motion.

Afterwards, to wit, on the 5th day of February, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

J. H. McCoy
vs. } 1303.
Z. Rhodes et Ux.

The motion herein taken on the 29th January, 1848, by the complainants for a rehearing in this case, being returnable this day, was taken up, and submitted by the counsel of both parties, upon written briefs to be furnished to the court.

Afterwards, to wit, on the 7th day of February, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was written on the minutes of said court:

J. H. McCoy
vs. } 1303.
Z. Rhodes et Ux et al.

This cause having been submitted to the court at a former day of this term, upon the petition of the complainants, praying for a rehear-

ing of this cause, and the court having maturely considered the same, doth now order, adjudge, and decree, that said application for a rehearing be, and the same is hereby, overruled, with costs.

Afterwards, to wit, on the 19th day of June, 1848, at a circuit court aforesaid, in session at New Orleans, the following order was entered on the minutes of said court:

J. H. McCoy
vs. } 1303.
Zachariah Rhodes et Ux.

On motion of R. C. Stockton, esq., of counsel for the complainant, and on representing that said complainant felt aggrieved at the decree rendered herein on the 24th January, 1848, and prayed an appeal therefrom to the Supreme Court of the United States, it is ordered that an appeal be, and the same is hereby, granted said complainant, J. H. McCoy, from the decree rendered as aforesaid, returnable to the next term of the Supreme Court of the United States, on his furnishing his bond, with R. S. Buckner as his surety, in the penal sum of five hundred dollars, conditional according to law.

Afterwards, to wit, on the 4th day of October, 1848, the following "bond for appeal" was filed in the clerk's office, to wit:

Know all men by these presents, that we, James H. McCoy, as principal, and Henry S. Buckner, a resident of the parish of Jefferson, Louisiana, as security, are held and firmly bound, in solido, to Zachariah Rhodes and his wife Luminda Montgomery, in the sum of five hundred dollars, to be paid to the said Zachariah Rhodes and Luminda Montgomery, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves firmly, jointly, and severally, by these presents. Sealed with our seals, and dated at New Orleans, on this tenth day of October, eighteen hundred and forty-eight.

Whereas, lately, at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the district of Louisiana, in a suit pending in said circuit court in chancery, wherein James H. McCoy was complainant, and Zachariah Rhodes and Luminda Montgomery, his wife, were defendants, a final decree was rendered against the said James H. McCoy, the complainant; and the said James H. McCoy having appealed from the said decree to reverse the same:

Now, the condition of this obligation is such, that if the said James H. McCoy shall prosecute said appeal with effect, and answer all damages and costs if he fail to make his plea good, then this obligation is to be void, else to remain in full force and virtue.

(Signed) JAMES H. McCOY,
By his attorney, ALEXANDER T. STEELE,
HENRY S. BUCKNER.

Attest:

C. H. TANEY, Jr.

UNITED STATES OF AMERICA,
Circuit court, fifth circuit, district of Louisiana, clerk's office.

I, Edmund Randolph, clerk of said court, do hereby certify, that the thirty-eight preceding pages contain a true, full, and complete transcript of the record, proceedings, and judgment had in the case stated.

Given under my hand and the seal of said court, at the city of New Orleans, this 12th day of October, A. D. 1848.

[SEAL.]

EDM. RANDOLPH, *Clerk.*
By JAS. M. DOWNS, *D. C.*

UNITED STATES OF AMERICA,
Circuit court of the United States, for the fifth circuit and district of Louisiana.

JAMES H. McCOY
vs.
ZACH. RHODES et al.

I, Theodore H. McCaleb, United States judge for the district of Louisiana, do hereby certify, that Edmund Randolph, whose name is signed to the above certificate, as clerk of the circuit court of the United States for the district of Louisiana, was at the time of signing said certificate, and is now, the clerk of said court; that said certificate is in due form of law; and that full faith and credit are due to his official attestations as such clerk.

I further certify, that Jas. M. Downs, who signed said Edmund Randolph's name as clerk, was at the time of signing the same the duly appointed and qualified deputy clerk of said Edmund Randolph.

Given under my hand and seal, at New Orleans, in the district of Louisiana, this 12th day of October, A. D. 1848.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

JAMES H. McCOY, complainant,
vs.
Z. RHODES and Wife, defendants.

In the fifth circuit court of the United States, for the district of Louisiana, sitting.

The testimony of Daniel R. Richardson, register of the land office at Ouachita, La., a witness in the above entitled cause, who being duly sworn says, in answer to the 1st interrogatory:

I am not acquainted with any of the parties to this suit.

Answer to 2d interrogatory. It appears from the records on file in my office, that he purchased from the United States, under the pre-emption law of 1838, on the 6th of December, 1839, the northwest quarter of section 29, township 10 north, range 10 east, containing one hundred and sixty $\frac{}{100}$ acres, at $1 $\frac{}{100}$ per acre, amounting to $200 25, as per certificate No. 5,975. This land was purchased in the name of Zachariah Rhodes.

Answer to 3d interrogatory. I held no office under the United States in the month of December, 1839, but I received a commission from the

United States, as register of the land office at Ouachita, Louisiana, dated 27th May, 1845, and was duly qualified to said office, and entered upon the duties thereof, about the first day of July, 1845; which office I have held ever since.

Answer to 4th interrogatory. I have answered this interrogatory in my answer to the 2d, to which I refer, except so far as this interrogatory asks in whose right of settlement and cultivation the land was entered. To this part of the interrogatory I answer, that I do not know. The proofs filed in relation to the cultivation, settlement, &c., of this entry, are returned to the Commissioner of the General Land office.

Answer to 5th interrogatory. The depositions of proofs of the entry of land, above described in my answer to 2d interrogatory, together with all the papers used in proving up that entry, (as *in* customary in all cases of proving up pre-emptions,) were returned to the Commissioner of the General Land office. The only evidence I have in my office of the entry of this land is the sales book or register, which shows, on page 210, that said Rhodes entered the tract of land as described in my answer to the 2d interrogatory; a true copy or transcript of said entry, as written on page 210 of said sales book or register, I hereto annex as part of this answer. Having examined the register, I find no other entry made in the name of said Rhodes; and, if there is any other entry made for him in the name of any other person, I have no means of ascertaining it.

Answer to 6th interrogatory. I know nothing further that would be of advantage to either of the parties.

D. B. RICHARDSON, *Register*.

Sworn to and subscribed before me, this 23d day of February, 1846.

O. D. STILLMAN, *Commissioner*.

LAND OFFICE AT OUACHITA, LA.

Transcript from the register or sales book on file in the above land office, from which it appears that Zachariah Rhodes entered, under a pre-emption right, the following described land, thus:

Date of certificate.	No. of certificate.	Name.	Residence.	Section, or parts of.	Township.	Range.	Quantity.		Rate per acre.	Amount of purchase money.
							Acres.	100ths.		
Pre-emption of 1838. December 6, 1839.	5975	Zachariah Rhodes.	Concordia.	NW. ¼ sec. 29	10	18 E.	160	20	$1 25	$200 25

I, D. B. Richardson, register of the land office at Ouachita, La., do hereby certify, that the above is a true and correct transcript from the register or sales book on file in this office.

As witness my hand, this 23d day of February, A. D. 1846.

D. B. RICHARDSON, *Register*.

LAND OFFICE AT OUACHITA, LA.

Transcript from the register of receipts on file in the office of the receiver of the land office at Ouachita, La., from which it appears that Zachariah Rhodes entered, under a pre-emption right, the following described land, thus:

Date of certificate.	No. of certificate.	Name.	Residence.	Section, or parts of.	Township.	Range.	Quantity.		Rate per acre.	Amount of purchase money.
							Acres.	100ths.		
December 6, 1839.	5975	Zachariah Rhodes.	Concordia, La.	NW. ¼ sec. 29	10	10 E.	160	20	$1 25	$200 25

I, J. B. Filhiol, acting as receiver of public moneys at Ouachita, La., for H. Holmes, now absent, do hereby certify, that the above is a true and correct transcript from the register of receipts on record in said office.

As witness my hand, this 23d day of February, A. D. 1846.

J. B. FILHIOL, *Receiver pro tem.*

The testimony of John B. Filhiol, receiver pro tem. of the land office at Ouachita, La., a witness in the above entitled cause, who being duly sworn says, in answer to the 1st interrogatory:

I am not acquainted with any of the parties in this suit.

Answer to 2d interrogatory. It appears from the records on file in my office, that he, Zachariah Rhodes, purchased in his own name from the United States, under the Pre-emption law of 1838, on the 6th December, 1839, the north west quarter of section 29, township 10 north, range 10 east, containing 160 $\frac{20}{100}$ acres, at $1 $\frac{25}{100}$ per acre, amounting to $200 $\frac{25}{100}$, as per receiver's receipt, No. 5,975.

Answer to 3d interrogatory. I held no office under the United States in the month of December, 1839, but am now acting as receiver pro tem. of the land office at Ouachita, La., under an appointment from Dr. H. Holmes, receiver, (who had received a leave of absence,) agreeably to instructions received by him from the General Land office.

Answer to 4th interrogatory. I refer to my answer to 2d interrogatory for answer to this, except so far as this relates to whose right of settlement and cultivation the land was entered; to this part of the interrogatory I answer, I do not know. The proofs filed in relation to the cultivation, settlement, &c., of this entry of land, are returned to the Commissioner of the General Land office.

Answer to 5th interrogatory. The depositions, proofs, &c., of the entry of lands above described in my answer to 2d interrogatory, together with all the papers used in proving up that entry, were returned to the Commissioner of the General Land office, and are not in the cus-

1465.

86.

tody of the officers of this office. The only evidence in the receiver's office of the entry of this land is the register of receipts, which shows that said Rhodes entered the tract of land as described in my answer to the 2d interrogatory; a true copy or transcript of the entry of said land, as appears from said register, I hereto annex as part of this answer. I know of no other entry of land made by said Rhodes, either by him in his own name, or in the name of any other person.

Answer to 6th interrogatory. I know nothing further that would be of any advantage to the parties.

J. B. FILHIOL,
Receiver pro tem.

Sworn to and subscribed before me this 23d day of February, 1846.

O. D. STILLMAN,
Commissioner.

STATE OF LOUISIANA, *Parish of Ouachita:*

I, Oliver D. Stillman, commissioner, duly appointed to execute the annexed commission, do hereby certify, that I caused to come before me, in the town of Monroe, Daniel B. Richardson, register of the land office, and John B. Filhiol, receiver pro tem. of said office, witnesses in a certain cause now pending in the fifth circuit court of the United States for the district of Louisiana, wherein James H. McCoy *and* complainant, and Z. Rhodes and wife, defendant, being suit No. 1303, on the docket of said court; and that I reduced to writing their answers to the several interrogatories hereto annexed, after they had been duly sworn according to law.

Witness my hand at Monroe, this 23d day of Febuary, A. D. 1846.

O. D. STILLMAN,
Commissioner.

UNITED STATES OF AMERICA,
District of Louisiana, circuit court of the United States, fifth circuit, clerk's office.

I, Edmund Randolph, clerk of said court, do hereby certify, that the foregoing five pages, and this page, contain a full, true, and correct transcript of the testimony of D. B. Richardson and J. B. Filhiol, in the case of J. H. McCoy vs. Z. Rhodes et Ux.

[L. S.] In testimony whereof I have hereunto set my hand and affixed my seal of office, this third day of November, A. D. 1848.

EDM. RANDOLPH *Clerk.*
By JAS. M. DOWNS, *D. C.*

Filed 4th December, 1848.